

Application No. 10/726,309
Response to Office Action dated 10/6/2005
RCE with Amendment dated 2/6/2006

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REMARKS

Applicants thank the Examiner for the consideration given the present application. Claims 1-14, 16 and 18-20 are pending in the present application. Claims 1, 18 and 19 have been amended herein. Claims 15 and 17 have been cancelled. No new claims have been added.

Specifically, Claims 1 and 19 have been amended to add the language "wherein coffee is contained within said packaging system" and "wherein said body has at least one region of deflection disposed thereon." Support for these amendments can be found in Claims 15 and 17, respectively, as originally filed.

Claims 16 and 18 have been amended to modify their dependency.

Rejection under 35 USC §103

Claims 1-5 and 15-20 have been rejected under 35 USC §103(a) as being obvious over Vidkjaer, U.S. Patent No. 6,733, 803 (herein "Vidkjaer") in view of The Encyclopedia of Polymer Science and Technology (herein "Encyclopedia"). Claims 1-7, 11-14 and 17-20 have been rejected as being obvious over Bruke, U.S. Patent No. 3,944,127 (herein "Bruke") in view of the Encyclopedia. Finally, Claims 8-10 have been rejected over Bruke in view of Encyclopedia and further in view of Ota, U.S. Patent No. 4,890,752 (herein "Ota"). More specifically, Vidkjaer, in view of Encyclopedia, is relied on to allegedly teach the limitations of the present Claim 1, although the Examiner admits that Vidkjaer discloses a thermoformed, rather than blow-molded, container. Moreover, it is presumed that the Vidkjaer invention would have a tensile modulus in accordance with the present claims. Bruke, in view of Encyclopedia and Ota, is relied on to allegedly teach a coffee container meeting all the limitations of the present claims, including a handle. Applicants respectfully traverse all of these rejections for the following reasons.

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The Examiner bears the burden of factually supporting any prima facie conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530 (Fe. Cir. 1983). If the Examiner does not prove a prima facie case of unpatentability, then without more, the Applicant is entitled to grant of the patent. See In re Oetiker, 977 F.2d 1443.

To establish a prima facie case of obviousness under 35 U.S.C. §103, the Examiner must meet three basic criteria. First, there must be some suggestion or motivation, either in the reference itself, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the cited reference must teach or suggest *all* the claim limitations. See, for example, In re Vaecck, 947 F.2d 488 (Fed. Cir. 1991). Applicants respectfully assert that the Office Action fails to establish all of these criteria and thus, fails to make a prima facie case of obviousness under 35 U.S.C. § 103.

The Vidkjaer Reference

Applicants respectfully assert that the Vidkjaer reference fails to teach all of the claims limitations. Vidkjaer, alone or in combination with the other cited references, fails to teach the present blow-molded containers having regions of deflection, as amended herein. On page 3 of the Office Action the Examiner relies on reference number (3) of Vidkjaer to teach regions of deflection. The Examiner states that "the ribs on the container are for reinforcement and it is interpreted that they would be responsive to an internal or external force on the container." Page 3, paper No. 2. Thus, the Examiner has concluded that the reinforcement ribs in Vidkjaer can serve as both a reinforcement means and a region of deflection.

It is respectfully asserted that this is an improper conclusion. The present invention can comprise both ribs and regions of deflection, however, as described herein below, each serves a clearly distinct function. As taught presently, regions of deflection function "to isolate deflection of the container due to either pressures internal to the container or pressures due to forces exerted upon the container." Specification, page 8,

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lines 29-30. Incorporation of the regions of deflection is believed to allow flexion within the body portion of the container such that the body portion can deform uniformly without catastrophic failure or other defects, such as denting. Specification, page 9, lines 12-15. Moreover, the regions of deflection are designed to have *less resistance to deflection* than the regions of the container proximate to the regions of deflection (emphasis added). Specification, page 9, lines 28-29. In this way, any movements of the container due to changes in pressure preferentially impact the regions of deflection rather than the remainder of the container. Id. lines 30-31. Moreover, the ribs of the present invention are designed to provide structural stability and further restrict movement of the container to the regions of deflection. Specification, page 10, lines 6-14.

In view of the above, it is respectfully asserted that the assumption that the reinforcement ribs of Vidkjaer can both reinforce the container (like the present ribs) and allow flexibility (like the present regions of deflection) is incorrect. The ribs of Vidkjaer cannot provide reinforcement *and* concurrently be less resistant to deflection. Thus, Applicants respectfully assert that it is improper to assume that the ribs of Vidkjaer can serve both functions simultaneously. Therefore, Vidkjaer fails to teach the present regions of deflection. The additional cited references do nothing to remedy this deficiency of Vidkjaer. Thus, it is respectfully asserted that Vidkjaer, either alone or in combination, fails to teach all of the claim limitations and, therefore, the Office Action fails to establish a prima facie case of obviousness.

The Bruke reference

Applicants respectfully assert that the Bruke reference, either alone or in combination with the other cited references, fails to provide a reasonable expectation of success. Bruke is essentially a bag-in-a box wherein the goods are packaged in a flexible inner container which is then placed in a supporting casing. When the goods are coffee, the inner container is evacuated to give it a stable form. Bruke, Col. 3, lines 15-23. Thus, the inner container would likely resemble a 'brick' of coffee that can then be placed into the supporting casing. Bruke, Col. 5, line 20. Applicants respectfully assert that this bag-in-a-box, double packaging configuration in no way provides any reasonable expectation of success of the present container which provides a single container for packaging

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coffee. More specifically, Bruke fails to provide any teaching that an off-gassing product, such as coffee, can be packaged in a blow-molded container without the use of a protective inner container. For this reason alone, it is respectfully asserted that Bruke fails to provide a reasonable expectation of success and, therefore, a prima facie case of obviousness has not been established.

Additionally, it is respectfully asserted that Bruke fails to teach or suggest all claim limitations for the reasons stated above in regards to Vidkjaer. Namely, Bruke, either alone or in combination with the other cited references, fails to teach or suggest a blow-molded container having regions of deflections designed to account for and manage movements of the container due to changes in pressure. For this additional reason, it is respectfully asserted that a prima facie case of obviousness has not been established.

Findings of fact relied upon in making the obviousness rejection must be supported by substantial evidence within the record. See In re Gartside, 203 F.3d 1305, 1315 (Fed. Cir. 2000). Applicants respectfully assert that, for the above reasons, the Office Action fails to support the obviousness rejection with substantial evidence, and thus, fails to establish obviousness under 35 U.S.C. § 103. Therefore, Applicants respectfully request the rejection under 35 U.S.C. § 103 be withdrawn.

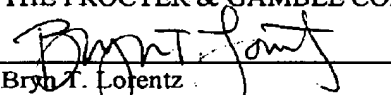
CONCLUSION

In light of the above amendments and remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC § 103(a). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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February 6, 2006